

COMMISSIONER OF INCOME TAX & ANR. vs. SRI CHAMUNDESHWARI SUGAR LTD.

HIGH COURT OF KARNATAKA

K. Sreedhar Rao & C.R. Kumaraswamy, JJ.

IT Appeal No. 143 of 2004

16th October, 2008

(2009) 21 DTR (Kar) 175

Income-tax Act, 1961, s. 32

In favour of : Assessee;

Assessment year 1992-93

Depreciation—User for business—Machinery found defective during trial runs—When the assessee bona fide instals any machinery and it becomes defective and non-functional, it cannot be said that it is not put to use for the purpose of business—Tribunal justified in allowing depreciation

Held : The purport and object of law relating to depreciation as envisaged under s. 32 has to be meaningfully interpreted, consistent with the object. When the assessee bona fide instals any machinery and to his misfortune, it becomes defective and non-functional, it cannot be said that it is not put into use for the purpose of business, may be the installation might have entailed the loss to him. Nonetheless, such a situation cannot be called as the one where the machinery was not put into use for the purpose of business. Hence, the view taken by the Tribunal in granting depreciation is sound and proper.—Dy. CIT vs. Yellamma Dasappa Hospital (2007) 207 CTR (Kar) 523 : (2007) 290 ITR 353 (Kar) distinguished.

(Para 6)

Conclusion : When the assessee bona fide instals any machinery and it becomes defective and non-functional, it cannot be said that it is not put to use for the purpose of business and, therefore, depreciation cannot be disallowed.

Case referred to

Liquidators of Pursa Ltd. vs. CIT (1954) 25 ITR 265 (SC)

Counsel appeared : M.V. Seshechala, for the Appellants : B.C. Thiruwengadam, for the Respondents

JUDGMENT—K. SREEDHAR RAO, J. :

The respondent-assessee, a company running a sugar factory for the asst. yr. 1992-93, installed pollution control machinery as per the mandate of the Pollution Control Board. The assessee sought for depreciation to the extent of the value of the machinery installed. The AO found that the machinery that was installed was found to be defective during the trial runs, therefore, held that the machinery was not used for the purpose of business as required under s. 32 of the IT Act, 1961. The AO has rejected the request for depreciation. The CIT(A) and the Tribunal in the appeals, have held that the assessee is entitled to depreciation because the machinery was installed and merely because it did not effectively function is not a ground to reject the depreciation.

2. The State is in appeal against the order of depreciation. Sri M.V.

Seshachala, learned counsel for the appellants relied on the decision of the Hon'ble Supreme Court in *Liquidators of Pursa Ltd. vs. CIT (1954) 25 ITR 265 (SC)*. At p. 272, the following observation is made by the Hon'ble Supreme Court :

"Indeed, the position has been made clear and placed beyond any doubt by the subsequent amendment of 1946 which added the word 'such' in cl. (vii). The words 'used for the purposes of the business' obviously mean used for the purpose of enabling the owner to carry on the business and earn profits in the business. In other words, the machinery or plant must be used for the purpose of that business which is actually carried on and the profits of which are assessable under s. 10(1). The word 'used' has been read in some of the pool cases in a wide sense so as to include a passive as well as active user. It is not necessary, for the purposes of the present appeal, to express any opinion on that point on which the High Courts have expressed different views. It is, however, clear that in order to attract the operation of cls. (v), (vi) and (vii), the machinery and plant must be such as were used, in whatever sense that word is taken, at least for a part of the accounting year. If the machinery and plant have not at all been used at any time during the accounting year no allowance can be claimed under cl. (vii) in respect of them and the second proviso also does not come into operation."

3. The learned counsel for the appellants also relied on the decision of this Court in *Dy. CIT vs. Yellamma Dasappa Hospital (2007) 207 CTR (Kar) 523 : (2007) 290 ITR 353 (Kar)*, to contend that the machinery was defective and non-functional, therefore, cannot be considered as one used for the purpose of business, to warrant depreciation.

4. The decision of this Court in *Yellamma Dasappa Hospital's case (supra)* is distinguishable on facts. In the said decision, as a fact, it was found that the hospital had brought certain machinery and no evidence was placed to prove its use during the assessment year, to claim depreciation.

5. The interpretation of "used for the purpose of business" by the Hon'ble Supreme Court in the decision cited lays down that machinery should be installed. The observation of the Hon'ble Supreme Court does not deal with a situation when the machinery installed becomes defective and does not function, in such case whether it could be said that machinery was not used for the purpose of business.

6. The purport and object of law relating to depreciation as envisaged under s. 32 of the IT Act, 1961, has to be meaningfully interpreted, consistent with the object. When the assessee bona fide installs any machinery and to his misfortune, it becomes defective and non-functional, it cannot be said that it is not put into use for the purpose of business, may be the installation might have entailed the loss to him. Nonetheless, such a situation cannot be called as the one where the machinery was not put into use for the purpose of business. Hence, the view taken by the Tribunal in granting depreciation is sound and proper.

7. Appeal is dismissed.
